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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 SCOTT HILTON,) Case No. CV 15-0806-JPR
12)
13 Plaintiff,)
14)
15 v.) MEMORANDUM OPINION AND ORDER
16) AFFIRMING COMMISSIONER
17)
18 CAROLYN W. COLVIN, Acting)
19 Commissioner of Social)
20 Security,)
21)
22 Defendant.)
23 _____)
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18 **I. PROCEEDINGS**

19 Plaintiff seeks review of the Commissioner's final decision
20 denying his application for Social Security disability insurance
21 benefits ("DIB"). The parties consented to the jurisdiction of
22 the undersigned U.S. Magistrate Judge under 28 U.S.C. § 636(c).
23 The matter is before the Court on the parties' Joint Stipulation,
24 filed October 23, 2015, which the Court has taken under
25 submission without oral argument. For the reasons stated below,
26 the Commissioner's decision is affirmed.
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II. BACKGROUND

Plaintiff was born in 1959. (Administrative Record ("AR") 133.) He obtained a GED and worked as a preparation cook, guard, guard supervisor, tool mechanic/repairer, and auto-body helper. (AR 21-22, 154.)

On November 17, 2011, Plaintiff applied for DIB, alleging that he had been unable to work since January 19, 2011, because of cirrhosis of the liver, portal hypertension, "ascites, edema," "generalized anxiety disorder," and "back pain (lumbar #5)." (AR 133.) After his application was denied, he requested a hearing before an Administrative Law Judge. (AR 98.) A hearing was held on May 9, 2013, at which Plaintiff, who was unrepresented, testified, as did a vocational expert. (AR 30-72.) In a written decision issued June 11, 2013, the ALJ found Plaintiff not disabled. (AR 12-22.) On December 4, 2014, the Appeals Council denied Plaintiff's request for review. (AR 1.) This action followed.

III. STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), a district court may review the Commissioner's decision to deny benefits. The ALJ's findings and decision should be upheld if they are free of legal error and supported by substantial evidence based on the record as a whole. See id.; Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial evidence means such evidence as a reasonable person might accept as adequate to support a conclusion. Richardson, 402 U.S. at 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007). It is more than a scintilla but less than a preponderance.

1 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.
2 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether
3 substantial evidence supports a finding, the reviewing court
4 "must review the administrative record as a whole, weighing both
5 the evidence that supports and the evidence that detracts from
6 the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715,
7 720 (9th Cir. 1996). "If the evidence can reasonably support
8 either affirming or reversing," the reviewing court "may not
9 substitute its judgment" for the Commissioner's. Id. at 720-21.

10 **IV. THE EVALUATION OF DISABILITY**

11 People are "disabled" for purposes of receiving Social
12 Security benefits if they are unable to engage in any substantial
13 gainful activity owing to a physical or mental impairment that is
14 expected to result in death or has lasted, or is expected to
15 last, for a continuous period of at least 12 months. 42 U.S.C.
16 § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.
17 1992).

18 A. The Five-Step Evaluation Process

19 The ALJ follows a five-step sequential evaluation process to
20 assess whether a claimant is disabled. 20 C.F.R.
21 § 404.1520(a)(4); Lester v. Chater, 81 F.3d 821, 828 n.5 (9th
22 Cir. 1995) (as amended Apr. 9, 1996). In the first step, the
23 Commissioner must determine whether the claimant is currently
24 engaged in substantial gainful activity; if so, the claimant is
25 not disabled and the claim must be denied. § 404.1520(a)(4)(i).

26 If the claimant is not engaged in substantial gainful
27 activity, the second step requires the Commissioner to determine
28 whether the claimant has a "severe" impairment or combination of

1 impairments significantly limiting his ability to do basic work
2 activities; if not, the claimant is not disabled and the claim
3 must be denied. § 404.1520(a)(4)(ii).

4 If the claimant has a "severe" impairment or combination of
5 impairments, the third step requires the Commissioner to
6 determine whether the impairment or combination of impairments
7 meets or equals an impairment in the Listing of Impairments
8 ("Listing") set forth at 20 C.F.R. part 404, subpart P, appendix
9 1; if so, disability is conclusively presumed.

10 § 404.1520(a)(4)(iii).

11 If the claimant's impairment or combination of impairments
12 does not meet or equal an impairment in the Listing, the fourth
13 step requires the Commissioner to determine whether the claimant
14 has sufficient residual functional capacity ("RFC")¹ to perform
15 his past work; if so, he is not disabled and the claim must be
16 denied. § 404.1520(a)(4)(iv). The claimant has the burden of
17 proving he is unable to perform past relevant work. Drouin, 966
18 F.2d at 1257. If the claimant meets that burden, a prima facie
19 case of disability is established. Id.

20 If that happens or if the claimant has no past relevant
21 work, the Commissioner then bears the burden of establishing that
22 the claimant is not disabled because he can perform other
23 substantial gainful work available in the national economy.
24 § 404.1520(a)(4)(v); Drouin, 966 F.2d at 1257. That
25 determination comprises the fifth and final step in the

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27 ¹ RFC is what a claimant can do despite existing exertional
28 and nonexertional limitations. § 404.1545; see Cooper v.
Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

1 sequential analysis. § 404.1520(a)(4)(v); Lester, 81 F.3d at 828
2 n.5; Drouin, 966 F.2d at 1257.

3 B. The ALJ's Application of the Five-Step Process

4 At step one, the ALJ found that Plaintiff had not engaged in
5 substantial gainful activity since January 19, 2011, the alleged
6 onset date. (AR 14.) At step two, he concluded that Plaintiff
7 had the severe impairments of "liver cirrhosis with portal
8 hypertension and lumbar degenerative joint and disc disease."
9 (Id.) He found that Plaintiff's mental impairments of "alcohol
10 abuse/dependence, in remission, anxiety, and depression" were not
11 severe. (Id.) At step three, the ALJ determined that
12 Plaintiff's impairments did not meet or equal any of the
13 impairments in the Listing. (AR 16.) At step four, he found
14 that Plaintiff had the RFC to perform light work with additional
15 physical restrictions but no mental ones. (Id.) Based on the
16 VE's testimony, the ALJ concluded that Plaintiff could perform
17 his past relevant work as a guard and guard supervisor. (AR 21.)
18 Accordingly, he found Plaintiff not disabled. (AR 22.)

19 V. **DISCUSSION**

20 The ALJ Properly Found Plaintiff's Mental Impairments Not Severe

21 Plaintiff claims the ALJ erred in finding his mental
22 impairments not severe. (J. Stip. at 4-13, 18-19.)

23 A. Applicable law

24 The step-two inquiry is "a de minimis screening device to
25 dispose of groundless claims." Smolen v. Chater, 80 F.3d 1273,
26 1290 (9th Cir. 1996). The claimant has the burden to show that
27 he has one or more "severe" medically determinable impairments
28 that can be expected to result in death or last for a continuous

1 period of at least 12 months, as demonstrated by evidence in the
2 form of signs, symptoms, or laboratory findings. See Bowen v.
3 Yuckert, 482 U.S. 137, 146 n.5 (1987); §§ 404.1508,
4 404.1520(a)(4)(ii); Ukolov v. Barnhart, 420 F.3d 1002, 1004-05
5 (9th Cir. 2005). A medically determinable impairment is "severe"
6 if it "significantly limits [the claimant's] physical or mental
7 ability to do basic work activities."² § 404.1520(c); see also
8 § 404.1521(a). "An impairment or combination of impairments may
9 be found 'not severe only if the evidence establishes a slight
10 abnormality that has no more than a minimal effect on an
11 individual's ability to work.'" Webb v. Barnhart, 433 F.3d 683,
12 686 (9th Cir. 2005) (emphasis in original) (quoting Smolen, 80
13 F.3d at 1290). A court must determine whether substantial
14 evidence in the record supported the ALJ's finding that a
15 particular impairment was not severe. See id. at 687.

16 B. Analysis

17 The ALJ found that Plaintiff had medically determinable
18 mental impairments of "alcohol abuse/dependence, in remission,
19 anxiety, and depression" but that those impairments caused no
20 more than a "minimal limitation" in his "ability to perform basic
21 mental work activities" and were thus not severe. (AR 14.)
22 Substantial evidence supported that determination, as discussed
23 below.

24 As the ALJ noted, although Plaintiff's primary-care
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26 ² "Basic work activities" include, among other things,
27 "[p]hysical functions such as walking, standing, sitting,
28 lifting, pushing, pulling, reaching, carrying, or handling" and
"[c]apacities for seeing, hearing, and speaking." § 404.1521(b);
accord Yuckert, 482 U.S. at 141.

1 physicians diagnosed and prescribed low-dose medication for
2 depression and anxiety, very few objective clinical findings
3 supported those diagnoses, suggesting that Plaintiff's mental-
4 health treatment was based on his subjective complaints. See
5 Febach v. Colvin, 580 F. App'x 530, 531 (9th Cir. 2014) (finding
6 that diagnosis of depression "alone [was] insufficient for
7 finding a 'severe' impairment" when other evidence in record
8 suggested that impairment was not severe). For example, in
9 February 2011, Plaintiff's primary-care physician diagnosed
10 depression and anxiety but noted normal psychiatric findings.
11 (AR 217.) Later treatment notes, from April to June 2011, did
12 not mention treatment for depression or anxiety and continued to
13 indicate normal psychiatric findings. (AR 212-14.) In August
14 2011, a different primary-care physician noted that Plaintiff had
15 been taking mirtazapine and chlordiazepoxide³ since January 2011
16 and refilled the prescriptions but did not diagnose depression or
17 anxiety. (AR 285, 288, 290; see also AR 292-93 (in Sept. 2011,
18 physician noting Aug. 2011 continuation of psychiatric medication
19 but not diagnosing depression or anxiety).) In December 2011, a
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21 ³ Mirtazapine is used to treat depression. See Mirtazapine,
22 MedlinePlus, <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a697009.html> (last updated Dec. 15, 2014). Chlordiazepoxide,
23 also known by the brand name Librium, is used to treat anxiety
24 and control agitation caused by alcohol withdrawal. See
25 Chlordiazepoxide, MedlinePlus, <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a682078.html> (last updated July 16,
26 2012). Plaintiff apparently stopped drinking in January 2011.
27 (See AR 54 (Plaintiff testifying that he stopped drinking after
28 hospitalization for esophageal bleeding), 284 (Plaintiff was
hospitalized in Jan. 2011); see also AR 217 (health-risk
assessment indicating in Feb. 2011 that Plaintiff quit drinking
one month earlier).)

1 third primary-care physician diagnosed depression based on
2 Plaintiff's self-reported history. (AR 422-23.) From June 2012
3 to March 2013, the physician prescribed psychiatric medications
4 despite noting normal psychiatric findings and not conducting any
5 mental-status examination. (See AR 426 (in June 2012,
6 prescribing medication without conducting mental-status
7 examination), 428-30 (in July 2012, noting that Plaintiff was
8 "[n]egative" for anxiety, depression, insomnia, and memory
9 impairment), 432 (in Aug. 2012, noting that Plaintiff had normal
10 insight, normal judgment, and appropriate mood and affect), 435
11 (in Oct. 2012, continuing medication without conducting mental-
12 status examination), 437-38 (in Mar. 2013, noting that Plaintiff
13 had normal insight, normal judgment, and appropriate mood and
14 affect).) Thus, even though Plaintiff was treated for depression
15 and anxiety, the record showed that his treatment was based on
16 his subjective complaints, which are insufficient to establish a
17 severe impairment. See Mitchell-St. Julien v. Astrue, No. CV
18 10-9080-SP, 2012 WL 83858, at *5-6 (C.D. Cal. Jan. 11, 2012) (in
19 finding claimant's mental impairment not severe, ALJ properly
20 rejected treating physician's opinion because it was based on
21 claimant's subjective complaints); cf. Ukolov, 420 F.3d at 1005-
22 06.

23 Further, treatment notes showed that medication improved
24 Plaintiff's self-reported anxiety and depression. See Davenport
25 v. Colvin, 608 F. App'x 480, 481 (9th Cir. 2015) (affirming ALJ's
26 determination that claimant's mental impairments were not severe
27 in part because treatment notes indicated that claimant's
28 "depression and anxiety were either mild or improved with

1 treatment"). For example, in July 2012, Plaintiff reported that
2 although some days "he [could] get overwhelmed," he was "stable."
3 (AR 427.) In August 2012, he was off Librium (chlordiazepoxide)
4 and was on Paxil⁴ and reported that he was "doing fine." (AR
5 431.) In October 2012, he reported "feeling better" on Paxil,
6 with "less mood issues/anxious," but because of side effects he
7 was switched to Lexapro.⁵ (AR 434-35.) In March 2013, Plaintiff
8 reported "[n]o further significant rage/irritability" with
9 Lexapro, and although he had "some anxiety still," he was not
10 "obsessed over it." (AR 436.) At the time of the hearing, the
11 only medication Plaintiff was taking for his mental health was a
12 "low dose" of Paxil for self-described "mild bouts of
13 depression." (AR 48.) He testified that his medicines were
14 "stabilizing, doing better now." (AR 58.)

15 Finally, in his application for benefits, Plaintiff did not
16 allege depression as a disabling mental impairment; he alleged
17 only generalized anxiety disorder. (AR 153.) When asked at the
18 hearing why he couldn't work, he didn't point to any mental-
19 health issues but rather only his portal hypertension. (See AR
20 42-43.) Plaintiff acknowledged that he had never received
21 mental-health treatment from a psychiatrist or psychologist or
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23 ⁴ Paxil is a brand name for paroxetine, which is used to
24 treat depression and generalized anxiety disorder, among other
25 mental disorders. See Paroxetine, MedlinePlus, <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a698032.html> (last
updated Nov. 15, 2014).

26 ⁵ Lexapro is a brand name for escitalopram, which is used to
27 treat depression and generalized anxiety disorder. See
28 Escitalopram, MedlinePlus, <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a603005.html> (last updated Feb. 15, 2016).

1 been hospitalized for psychiatric problems. (AR 48.) He also
2 stated that his "mild bouts of depression" were "due to not
3 working and not having any kind of a lifestyle whatsoever."
4 (Id.) Further, Plaintiff testified that much of his lethargy and
5 inability to do much around the house was attributable to the
6 "sedat[ing]" side effect of one of the medications he took for
7 his physical conditions (AR 43; see also AR 58-59) – and
8 presumably was not caused by his "mild" depression. For all
9 these reasons, the ALJ properly found that Plaintiff's mental
10 impairments caused no more than minimal limitation in his ability
11 to perform basic work activities and were therefore not severe.

12 In making his determination, the ALJ properly discounted the
13 opinions of the consultative examining psychiatrist and
14 nonexamining state-agency physician. Dr. Pramual Pinanong, the
15 consultative psychiatrist, examined Plaintiff in March 2012 and
16 diagnosed "[m]ajor depression, recurrent, unspecified." (AR
17 316.) Dr. Pinanong opined that Plaintiff was "moderately
18 impaired" in his ability to "follow simple one or two step
19 instructions," "maintain attention and concentration required to
20 perform work-related tasks," and "withstand the stress of a
21 routine workday and adapting [sic] to change." (AR 317.) Dr.
22 Elizabeth Leftik, a state-agency psychologist, reviewed
23 Plaintiff's records and prepared a case analysis. (AR 79-80.)
24 Among other things, she found that Plaintiff had moderate
25 difficulties in maintaining concentration, persistence, or pace
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1 and concluded that he had a severe affective disorder. (AR 79.)⁶

2 The ALJ properly gave "little weight" to Dr. Pinanong's
3 opinion because it was inconsistent with Plaintiff's
4 "longitudinal mental health treatment records," which contained
5 little objective medical support, as discussed above. (AR 16);
6 see Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001)
7 (ALJ may properly reject examining physician's opinion "for lack
8 of objective support"); Mendoza v. Astrue, 371 F. App'x 829, 831-
9 32 (9th Cir. 2010) (ALJ may reject examining physician's opinion
10 that is "unsupported by the record as a whole").

11 The ALJ also properly discounted Dr. Pinanong's opinion
12 because it was not supported by his own examination findings.
13 (AR 15); see Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir.
14 2002) ("The ALJ need not accept the opinion of any physician,
15 including a treating physician, if that opinion is . . .
16 inadequately supported by clinical findings."). As the ALJ
17 noted, Plaintiff told Dr. Pinanong that although he had been
18 "feeling depressed off and on," it was "not that bad."⁷ (AR
19 314.) Plaintiff also stated that he got along well with friends
20 and reported normal activities of daily living, including helping
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22 ⁶ The ALJ posed a hypothetical to the VE that seemingly
23 accounted for all of these mental limitations, and the VE
24 responded that although Plaintiff would not be able to do his
25 past work there was other substantial gainful work available for
26 him in the national economy. (AR 66.) Because the ALJ found
that Plaintiff could perform some of his past relevant work, he
did not reach step five of the sequential evaluation.

27 ⁷ Plaintiff is incorrect in asserting that "[n]o where [sic]
28 in Dr. Pinagnong's [sic] opinion does he indicate 'not that
bad.'" (J. Stip. at 12.)

1 his friend get ready for work, preparing meals, washing dishes,
2 checking email, cleaning the house, and watching movies with a
3 friend. (AR 314-15.)

4 The ALJ also properly accorded little weight to Dr.
5 Pinanong's assessed moderate limitations because they "appear[ed]
6 to be based primarily on [Plaintiff's] subjective complaints,"
7 which the ALJ found "not fully credible." (AR 16); see
8 Tonapetyan, 242 F.3d at 1149 (because record supported ALJ's
9 discounting of claimant's credibility, ALJ "was free to disregard
10 [examining physician's] opinion, which was premised on
11 [claimant's] subjective complaints"). Given that minimal
12 objective medical evidence in the record supported the diagnoses
13 of depression and anxiety, the ALJ reasonably noted that Dr.
14 Pinanong's opinion was based primarily on Plaintiff's subjective
15 complaints. In addition, Dr. Pinanong's assessed limitations
16 were inconsistent with Plaintiff's statement that his depression
17 was "not that bad" and with his description of his daily
18 activities. Moreover, Plaintiff does not challenge the ALJ's
19 credibility determination on appeal; indeed, the record supports
20 it. For instance, Plaintiff told Dr. Pinanong that after his May
21 2010 surgery to repair "burst arteries," he "never went back to
22 work again due to his physical problems along with anxiety and
23 depression." (AR 314.) But at the hearing, he testified that he
24 was laid off in 2010 because the company was downsizing. (AR
25 42.) Plaintiff also told Dr. Pinanong that he received treatment
26 from a psychiatrist in 2010 (AR 314), but the record does not
27 contain any treatment notes from a psychiatrist or other mental-
28 health specialist (see AR 80 (state-agency reviewer noting no

1 psychiatric records except Dr. Pinanong's report)).

2 Plaintiff cites Edlund v. Massanari, 253 F.3d 1152, 1159
3 (9th Cir. 2001) (as amended) (J. Stip. at 10), but that case is
4 distinguishable. In finding the claimant's mental impairments
5 not severe, the ALJ in Edlund did not specifically address the
6 weight given to the examining psychologist's opinion but rather
7 "selectively" cited portions in which the psychologist expressed
8 doubt about the claimant's credibility. 253 F.3d at 1159; see
9 also id. at 1155. Here, the ALJ separately addressed Dr.
10 Pinanong's findings and opinion in making his step-two
11 determination, according little weight to Dr. Pinanong's assessed
12 limitations not only because they were based on Plaintiff's
13 subjective complaints but because they were inconsistent with the
14 record as a whole and with some of his own examination findings.
15 As discussed above, those reasons were supported by substantial
16 evidence.

17 The ALJ also properly gave "little weight" to the
18 nonexamining state-agency physician's opinion that Plaintiff's
19 mental impairments were severe. (AR 16; see AR 79.) As the ALJ
20 noted, Dr. Leftik's opinion expressly relied on Dr. Pinanong's
21 opinion and was not supported by objective medical evidence in
22 the record. (See AR 80 (Dr. Leftik noting no psychiatric
23 evidence in record other than Dr. Pinanong's report), 81 (Dr.
24 Leftik indicating "Great Weight" given to Dr. Pinanong's
25 opinion)); see Harlow v. Soc. Sec. Admin., Comm'r, 577 F. App'x
26 698, 698 (9th Cir. 2014) (in finding claimant's mental
27 impairments not severe, ALJ properly gave "minimal weight" to
28 opinion of nonexamining physician because he "failed to clearly

1 explain or adequately support his finding that [claimant]
2 suffered from moderate limitations"); cf. Batson v. Comm'r of
3 Soc. Sec. Admin., 359 F.3d 1190, 1195 (9th Cir. 2004) ("an ALJ
4 may discredit treating physicians' opinions that are conclusory,
5 brief, and unsupported by the record as a whole . . . or by
6 objective medical findings").

7 Thus, substantial evidence supported the ALJ's finding that
8 Plaintiff's mental impairments were not severe. Plaintiff is not
9 entitled to remand on this ground.

10 **VI. CONCLUSION**

11 Consistent with the foregoing, and under sentence four of 42
12 U.S.C. § 405(g),⁸ IT IS ORDERED that judgment be entered
13 AFFIRMING the decision of the Commissioner, DENYING Plaintiff's
14 request for remand, and DISMISSING this action with prejudice.
15 IT IS FURTHER ORDERED that the Clerk serve copies of this Order
16 and the Judgment on counsel for both parties.

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18 DATED: March 17, 2016



JEAN ROSENBLUTH
U.S. Magistrate Judge

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26 ⁸ That sentence provides: "The [district] court shall have
27 power to enter, upon the pleadings and transcript of the record,
28 a judgment affirming, modifying, or reversing the decision of the
Commissioner of Social Security, with or without remanding the
cause for a rehearing."